

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

M.J.,

Petitioner,

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

v.

FRESNO COUNTY DEPARTMENT OF
CHILDREN & FAMILY SERVICES,

Real Party in Interest.

F058530

(Super. Ct. Nos. 09CEJ300048-1 &
09CEJ300048-2)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jane Cardoza, Judge.

Kenneth K. Taniguchi, Public Defender, and Julie Ann Bowler, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

-ooOoo-

* Before Vartabedian, Acting P.J., Cornell, J. and Dawson, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from respondent court's orders issued at a contested dispositional hearing denying her reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to her twin daughter and son, S.J. and G.J. respectively. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

The instant dependency proceedings were initiated in February 2009 when, while hospitalized to deliver S.J. and G.J., petitioner tested positive for methamphetamine, cocaine and marijuana. She also had multiple sexually transmitted diseases, including syphilis, which she passed on to the twins. They were diagnosed with congenital syphilis and neurosyphilis.²

Approximately a month before petitioner delivered the twins, she was found passed out on a street in Texas. She was taken to the hospital, where it was discovered she was under the influence of drugs, homeless and prostituting. The Texas Department of Family and Protective Services (Texas department) placed her in a residential substance abuse treatment program, but she left against medical advice and fled to California. At the time of petitioner's departure, another of her daughters, S., was the subject of dependency proceedings in Texas and a hearing to terminate petitioner's parental rights as to her was scheduled for September 2009.

Since the facts and circumstances of S.'s dependency are relevant here, we will briefly set them forth. In June 2007, at eight weeks of age, S. was removed from petitioner's custody after law enforcement found crack pipes in petitioner's car. S., a passenger in the vehicle, was dirty and sweaty. There was also an intoxicated adult male

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Congenital syphilis is syphilis present in utero and at birth. Neurosyphilis is an infection of the brain or spinal cord.

in the car who petitioner met while begging for money at a gas station. They planned to smoke crack cocaine together.

A Texas county juvenile court ordered petitioner to participate in reunification services and, in January 2008, she completed residential drug treatment and enrolled in outpatient drug treatment. She also completed parenting classes, secured employment and obtained an apartment. In addition, her drug tests were clean until mid-April when she discharged herself from outpatient treatment. In early May, she relapsed and lost contact with the Texas department.

In February 2009, the Fresno County juvenile court ordered S.J. and G.J. detained from petitioner's custody and ordered the Fresno County Department of Children and Family Services (department) to offer petitioner parenting classes, substance abuse and mental health evaluations and treatment, and random drug testing. In February 2009, petitioner entered inpatient drug treatment.

In May 2009, the juvenile court adjudged S.J. and G.J. dependents of the court and set the dispositional hearing for June. The hearing was continued and conducted as a contested hearing in September 2009. Meanwhile, the department filed its dispositional report recommending the court deny petitioner reunification services because of her failure to reunify with S. (§ 361.5, subd. (b)(10)) and failure to treat her chronic drug use (§ 361.5, subd. (b)(13)).

Petitioner conceded, at the contested dispositional hearing, there was a factual basis for denying her reunification services under section 361.5, subdivision (b)(13), and county counsel withdrew its recommendation the court also deny her services under section 361.5, subdivision (b)(10). However, notwithstanding a factual basis for a denial of services, petitioner argued the juvenile court should find it in the twins' best interest to provide her reunification services in light of her progress. To that end, petitioner testified she completed six months of residential drug treatment in August, had eight months of sobriety and attended four Narcotics Anonymous meetings a week. She completed the

required parenting class, as well as two extra classes; a second parenting class and a class in domestic violence and anger management. Petitioner expressed remorse and regret over the decisions she made, but believed she had become a better person. She felt confident she would remain clean and sober this time because of her relationship with Jesus Christ and her newfound desire to change her life. Petitioner also testified she had a home and furnished bedrooms for each of the twins.

Petitioner's mother and the court liaison from the residential treatment program testified petitioner had made dramatic positive changes since entering treatment. In addition, petitioner's mother testified petitioner had family and friends to support her sobriety, whereas in Texas she had no support.

Petitioner's caseworker confirmed that petitioner was making excellent progress in drug treatment and had made significant positive changes in her behavior. She also testified petitioner and the children shared a warm, comfortable relationship. However, she did not believe the children had a special bond to petitioner. Though they smiled in response to petitioner's smile and listened and responded when she spoke, the caseworker said they responded the same way to her.

The caseworker also testified she did not believe it would be in the children's best interests to offer petitioner reunification services because of petitioner's history of relapse and the stress of caring for special needs children. She testified both children suffer developmental delay and S. suffers from hemihypertrophy, which she explained is a disorder where one side of the body develops at a different rate and which can lead to a large spectrum of other diseases including cancer of the liver and kidneys.

At the conclusion of the hearing, the juvenile court concluded reunification would not serve the children's best interests and denied petitioner services. The court also set a section 366.26 hearing to develop a permanent plan. This petition ensued.

DISCUSSION

Petitioner contends reunification services would both benefit her and serve S.J. and G.J.'s best interests. Therefore, she argues, the juvenile court erred in denying her reunification services. We disagree.

Section 361.5 pertains and provides in relevant part: "The court shall not order reunification for a parent ... described in paragraph ... (13), ... of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." As set forth, the statute makes clear that whether services would benefit petitioner was not a consideration in the juvenile court's decision to order or not order services. Rather, the court's paramount and only concern was the best interests of her children. To that end, the juvenile court "has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order" accordingly. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) On review, we will not reverse the court's decision to deny a parent reunification services absent a clear abuse of discretion. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.)

In support of her proposition reunification services would serve S.J. and G.J.'s best interests, petitioner identifies factors, which if applied to her case, she contends, would force a conclusion contrary to the one made in this case. Those factors, set forth in *In re Ethan N.* (2004) 122 Cal.App.4th 55 (*Ethan N.*), are: the parent's current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child's need for stability and continuity. (*Id.* at pp. 66-67.)

Petitioner correctly argues, and the juvenile court noted, that her efforts were significant and positive. If petitioner's efforts were the court's only consideration, it may have decided differently. However, there are other factors to consider and, as applied to these facts, none of them weigh in favor of reunification largely because of the chronicity of petitioner's drug use, her history of relapse and the devastating effect of her drug use

on her children. As the juvenile court noted, petitioner has a 15-year history of polydrug use with no long-term sobriety. Further, during her pregnancy with the twins, she took drugs with regularity, engaged in prostitution and sought no prenatal care. As a result, the twins have syphilis and its attendant physical complications. From these facts, the juvenile court concluded, and we concur, that the problem requiring S.J. and G.J.'s removal is serious and petitioner, despite her strong efforts, had yet to demonstrate parental fitness. Finally, and most importantly, S.J. and G.J., like all children, need the stability and continuity that a permanent home provides and, according to this record, the strength of their bond to petitioner is not such that their best interests would be undermined if reunification were not the plan.

Based on the foregoing, we find no abuse of discretion in the juvenile court's decision to deny petitioner reunification services. We affirm the juvenile court's findings and orders and deny the writ petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.